

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 95-179

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

#### 1. Statutory Authority

The recitation of statutory authority for the rule, and the statutes interpreted by the rule, should be cited as "ss. 111.09 (1) and (2), 111.71 (1) and (2) and 111.94 (1) and (2) of the statutes, as affected by 1995 Wisconsin Act 27, and SECTION 9120 (3g) of 1995 Wisconsin Act 27."

#### 2. Form, Style and Placement in Administrative Code

a. In SECTIONS 2, 3, 4, 6, 7 and 8, following the treatment clause, the rule section number should appear immediately preceding the text of the material being amended. [See ss. 1.04 and 1.06, Manual.]

b. In SECTION 6, "ERC 10.21 (1)" should be deleted and be replaced by "s. ERC 10.21 (1)."

c. In SECTION 9, the second occurrence of "s. ERC 20.21 (4)" should be renumbered as sub. (5).

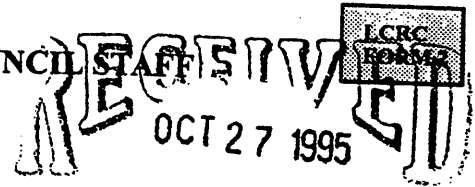
#### 4. Adequacy of References to Related Statutes, Rules and Forms

a. In the analysis and in SECTIONS 1, 5 and 9 of the rule-making order, insert "Stats.," after all of the statutory references to provisions contained in ch. 111, Stats.

b. In SECTIONS 2, 6 and 7, "s." should be inserted before "ERC."

c. In s. ERC 10.21 (4) and (5), the reference to "s. ERC 10.21 (3)" should be replaced by a reference to "sub. (3)." Similarly, in s. ERC 20.21 (4), the reference to "s. ERC 20.21 (3)" should be replaced by a reference to "sub. (3)."

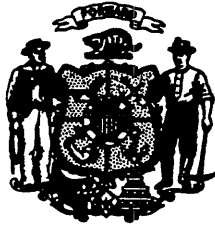
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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 95-179**

AN ORDER to amend ERC 2.02 (1) (d), 10.08 (4), 10.13 (5), 12.02 (2) (e), 20.08 (4) and 20.13 (5); and to create ERC 1.06, 10.21 and 20.21, relating to fees for complaints, grievance arbitration, mediation, fact-finding, interest arbitration and transcripts.

Submitted by **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

09-29-95 RECEIVED BY LEGISLATIVE COUNCIL.

10-27-95 REPORT SENT TO AGENCY.

RS:DF;jt;ksm

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES ☒

NO ☐

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES ☒

NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES ☐

NO ☒

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached

YES ☒

NO ☐

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES ☐

NO ☒

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES ☐

NO ☒

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES ☐

NO ☒



State Senator  
**James R. Baumgart**

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June 28, 1999

TO: Members of the Senate Labor Committee

Senator Russell Decker  
Senator Roger Breske

Senator David Zien  
Senator Margaret Farrow

FROM: Senator Jim Baumgart, Chair

Re: Administrative Rule

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On June 16, 1999, the following administrative rule was referred to the committee for review:

**CLEARINGHOUSE RULE 95-179**

Relating to fees for complaints, grievance arbitration, mediation, fact-finding, interest arbitration and transcripts.

Submitted by the Wisconsin Employment Relations Commission

Enclosed is a copy of the rule. If you have any concerns or questions about the rule or want a public hearing on the rule, please advise immediately.

cc: Dan Fernbach, Legislative Council Attorney

## ***PROPOSED ORDER OF THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION***

The Wisconsin Employment Relations Commission proposes an order to amend ERC 2.02(1)(d), 10.08(4), 10.13(5), 12.02(2)(e), 20.08(4), 20.13(5); and to create ERC 1.06, 10.21 and 20.21 relating to fees for complaints, grievance arbitration, mediation, fact-finding, interest arbitration and transcripts.

Sections 111.09(1) and (2), 111.71(1) and (2), and 111.94(1) and (2) of the statutes, as affected by 1995 Wisconsin Act 27, and SECTION 9120(3g) of 1995 Wisconsin Act 27 require that the Commission promulgate rules establishing a schedule of filing fees and transcript fees to be paid in the following circumstances:

1. When a complaint is received alleging that an unfair labor practice has been committed under s. 111.06 or 111.84 or that a prohibited practice has been committed under s. 111.70(3).
2. When a request is received asking that the Commission or its staff act as a grievance arbitrator under s. 111.10, 111.70(4)(c)2, 111.70(4)(cm)4., or 111.86(1).
3. When a request is received asking that the Commission initiate fact-finding under s. 111.70(4)(c)3 or 111.88.
4. When a request is received asking that the Commission or its staff act as a mediator under s. 111.11, 111.70(4)(c)1, 111.70(4)(cm)3, or 111.87.
5. When a request is received asking that the Commission initiate interest arbitration under s. 111.70(4)(cm)6, 111.70(4)(jm) or 111.77(3).
6. When a party requests a transcript of a Commission proceeding.

These proposed rules meet the Commission's obligations under 1995 Wisconsin Act 27 by establishing filing fees of \$40 for complaint cases and \$250 for mediation, grievance arbitration, fact-finding and interest arbitration cases, and by establishing a transcript fee rate of \$5.00 per page or the actual per page fee of the court reporter, whichever is less.

SECTION 1. ERC 1.06 is created to read:

**ERC 1.06 Fees. (1) COMPLAINTS.** At the time a complaint is received alleging that an unfair labor practice has been committed under s. 111.06, Stats., the complaining party or parties shall pay the commission a filing fee of \$40. The complaint is not filed until the fee is paid.

**(2) GRIEVANCE ARBITRATION.** At the time a request is received asking that the commission or its staff act as a grievance arbitrator under s. 111.10, Stats., the parties to the dispute shall each pay the commission a filing fee of \$125.

**(3) MEDIATION.** At the time a request is received asking the commission or its staff to act as a mediator under s. 111.11, Stats., the parties to the dispute shall each pay the commission a filing fee of \$125.

**(4) TRANSCRIPTS.** Any party requesting the commission to provide a transcript of a commission proceeding shall pay a fee of \$5.00 per page or the actual per page fee of the court reporter, whichever is less.

SECTION 2. ERC 2.02(1)(d) is amended to read:

**ERC 2.02(1)(d)** A statement that the filing fee established by ~~s. 111.09(2), Stats.,~~ s. ERC 1.06(1) accompanies the complaint.

SECTION 3. ERC 10.08(4) is amended to read:

**ERC 10.08(4) COMPLETION OF FILING.** Papers required by s. 111.70, Stats., this chapter, chs. ERC 11, 12, 13, 14, 15, 16, 17, 18, 30 and 31, or order of the commission, to be filed with the commission, its agent, a fact finder, an arbitrator or with a mediator-arbitrator, shall be deemed filed upon actual receipt at the place specified for such receipt before the close of business. Papers received after the last day of the time allowed for such filing will not be accepted as timely filed unless good cause be shown warranting waiver, in which case the commission, its agent, a fact finder, an arbitrator or the mediator-arbitrator, as

the case may be, may upon receipt, deem the document filed at the time it was deposited in the United States mail or with a telegraph office, except that if a filing fee established by s. 111.71(2), Stats., s. ERC 10.21 is required to initiate a proceeding before the commission, the papers shall be deemed to be filed on the date on which the filing fee is received in the offices of the commission.

SECTION 4. ERC 10.13(5) is amended to read:

**ERC 10.13(5) TRANSCRIPTS OTHER THAN IN FACT-FINDING IN MUNICIPAL EMPLOYMENT.** Hearings shall be stenographically transcribed. ~~by the official reporter of the commission. Such transcripts shall be the sole official transcript. In prohibited practice cases the commission shall furnish one copy of the transcript to each of the parties. In election cases the commission may furnish one copy of the transcript to each of the parties. Copies of transcripts which are furnished to the parties will be furnished at no cost to them.~~

SECTION 5. ERC 10.21 is created to read:

**ERC 10.21 Fees. (1) COMPLAINTS.** At the time a complaint is received alleging that a prohibited practice has been committed under s. 111.70(3), Stats., the complaining party or parties shall pay the commission a filing fee of \$40. The complaint is not filed until the fee is paid.

**(2) GRIEVANCE ARBITRATION.** At the time a request is received asking that the commission or its staff act as a grievance arbitrator under s. 111.70(4)(c)2, or (cm)4., Stats., the parties to the dispute shall each pay the commission a filing fee of \$125.

**(3) MEDIATION.** At the time a request is received asking the commission or its staff to act as a mediator under s. 111.70(4)(c)1. or (cm)3, Stats., the parties to the dispute shall each pay the commission a filing fee of \$125.

**(4) FACT-FINDING.** At the time a request is

received asking the commission to initiate fact-finding under s. 111.70(4)(c)3, Stats., the parties to the dispute shall each pay the commission a filing fee of \$125, except that if the parties have previously paid a mediation filing fee for the same dispute under sub. (3), no fee shall be paid.

(5) **INTEREST ARBITRATION.** At the time a request is received asking the commission to initiate interest arbitration under s. 111.70(4)(cm)6, (4)(jm), or 111.77(3), Stats., the parties to the dispute shall each pay the commission a filing fee of \$125, except that if the parties have previously paid a mediation filing fee for the same dispute under sub. (3), no fee shall be paid.

(6) **TRANSCRIPTS.** Any party requesting the commission to provide a transcript of a commission proceeding shall pay a fee of \$5.00 per page or the actual per page fee of the court reporter, whichever is less.

SECTION 6. ERC 12.02(2)(e) is amended to read:

**ERC 12.02(2)(e)** A statement that the filing fee established by ~~s. 111.71(2), Stats.,~~ s. ERC 10.21(1) accompanies the complaint.

SECTION 7. ERC 20.08(4) is amended to read:

**ERC 20.08(4) COMPLETION OF FILING.** Papers required by subch. V, ch. 111, Stats., this chapter, ch. ERC 21, 22, 23, 24, or 25, or order of the board, to be filed with the commission, or its agent, an arbitrator, or a fact finder, shall be deemed filed upon actual receipt at the place specified for such receipt before the close of business. Papers received after the last day of the time allowed for such filing will not be accepted as timely filed unless good cause be shown warranting waiver, in which case the commission, arbitrator or fact finder, as the case may be, may, upon receipt, deem the document filed at the time it was deposited in the United States mail or with a telegraph office, except that if a filing fee established by ~~s. 111.94(2), Stats.,~~ s. ERC 20.21 is required to initiate a proceeding before

the commission, the papers shall be deemed to be filed on the date on which the filing fee is received in the offices of the commission.

SECTION 8. ERC 20.13(5) is amended to read:

**ERC 20.13(5) TRANSCRIPTS OTHER THAN IN FACT FINDING IN MUNICIPAL EMPLOYMENT.** ~~Hearings shall be stenographically transcribed. by the official reporter of the commission. Such transcripts shall be the sole official transcript. In prohibited practice cases the commission shall furnish one copy of the transcript to each of the parties. In election cases the commission may furnish one copy of the transcript to each of the parties. Copies of transcripts which are furnished to the parties will be furnished at no cost to them.~~

SECTION 9. ERC 20.21 is created to read:

**ERC 20.21 Fees. (1) COMPLAINTS.** At the time a complaint is received alleging that an unfair labor practice has been committed under s. 111.84, Stats., the complaining party or parties shall pay the commission a filing fee of \$40. The complaint is not filed until the fee is paid.

**(2) GRIEVANCE ARBITRATION.** At the time a request is received asking that the commission or its staff act as a grievance arbitrator under s. 111.86, Stats., the parties to the dispute shall each pay the commission a filing fee of \$125.

**(3) MEDIATION.** At the time a request is received asking the commission or its staff to act as a mediator under s. 111.87, Stats., the parties to the dispute shall each pay the commission a filing fee of \$125.

**(4) FACT-FINDING.** At the time a request is received asking the commission to initiate fact-finding under s. 111.88, Stats., the parties to the dispute shall each pay the commission a filing fee of \$125, except that if the parties have previously paid a mediation filing fee for the same dispute under sub. (3), no fee shall be paid.

(5) TRANSCRIPTS. Any party requesting the commission to provide a transcript of a commission proceeding shall pay a fee of \$5.00 per page or the actual per page fee of the court reporter, whichever is less.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2), Stats.

## ANALYSIS

### Need for the Proposed Rule

Sections 111.09(2), 111.71(2), and 111.94(2), Stats., require that the Wisconsin Employment Relations Commission "promulgate rules establishing a schedule of filing fees" for filing a complaint with the Commission or requesting that the Commission provide grievance arbitration, fact-finding, mediation or interest arbitration services. Proposed administrative rule 95-179 is needed to meet this statutory obligation.

Sections 111.09(1), 111.71(1), and 111.94(1), Stats., require that the Wisconsin Employment Relations Commission "establish by rule" the cost of transcripts of Commission hearings. Proposed administrative rule 95-179 is needed to meet this statutory obligation.

### Modifications Resulting From Public Hearing Testimony

None.

### List of Persons Appearing or Registering at Public Hearing

Terry Herm  
Fred Bau

### Response to Legislative Council Staff Recommendations

All recommendations have been accepted.

1993 Session

LRB or Bill No./Adm. Rule No.

Amendment No. if Applicable

## FISCAL ESTIMATE

DOA-2048 (R10/92)

☒ ORIGINAL  
☐ CORRECTED☐ UPDATED  
☐ SUPPLEMENTAL

## Subject

WERC Administrative Rule - Filing fees, Transcript fees

## Fiscal Effect

State: ☐ No State Fiscal EffectCheck columns below only if bill makes a direct appropriation  
or affects a sum sufficient appropriation.☐ Increase Existing Appropriation ☒ Increase Existing Revenues  
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues  
☐ Create New Appropriation☐ Increase Costs - May be possible to Absorb  
Within Agency's Budget ☐ Yes ☐ No☐ Decrease CostsLocal: ☐ No local government costs1. ☒ Increase Costs  
☐ Permissive ☒ Mandatory2. ☐ Decrease Costs  
☐ Permissive ☐ Mandatory3. ☐ Increase Revenues  
☐ Permissive ☐ Mandatory4. ☐ Decrease Revenues  
☐ Permissive ☐ Mandatory

5. Types of Local Governmental Units Affected:

☒ Towns ☒ Villages ☐ Cities  
☒ Counties ☒ Others Sewerage District  
☒ School Districts ☒ VTAE Districts

## Fund Sources Affected

☒ GPR ☐ FED ☒ PRO ☐ PRS ☐ SEG ☐ SEG-S

## Affected Ch. 20 Appropriations

20-425(1)(a) and (1)(i)

## Assumptions Used in Arriving at Fiscal Estimate

Fiscal Estimate Text

The proposed rules: establish a filing fee of \$250 per case for mediation, interest arbitration and fact-finding; increase an existing filing fee for grievance arbitration from \$25 to \$250; and maintain an existing \$25 filing fee for unfair labor practice or prohibited practice complaints. By statute, the filing fee for complaints is to be paid by the filing party while the cost of the filing fees for mediation, interest arbitration, fact-finding and grievance arbitration cases are to be shared equally by the employer and union.

For the fiscal years beginning 1987-1988 and ending 1993-1994, the Commission received an average of 1,541 cases per year (673 mediation, fact-finding and interest arbitration cases, 711 grievance arbitration cases and 157 complaint cases) which are subject to the filing fees. However, for fiscal year 1994-1995, the Commission received 1,398 cases (525 mediation, fact-finding and interest arbitration cases, 696 grievance arbitration cases and 177 complaint cases) which are subject to the fees. Counties, villages, towns, school districts, VTAE districts or sewerage districts were parties to 510 of the mediation, interest arbitration and fact-finding cases and 575 of the grievance arbitration cases.

For the purposes of this fiscal estimate as to filing fees, the Commission assumes that its case filing experience during fiscal year 1994-1995 will continue. If the Commission does not receive the anticipated statutory authority to collect filing fees for Sec. 111.70(4)(cm)6. interest arbitration or if the filing fees have the effect of reducing the number of cases the Commission receives, the revenue generated by the fees will decrease.

Given the foregoing assumptions, the Commission's proposed filing fee rules would have the following fiscal impacts:

## Long-Range Fiscal Implications

Agency/Prepared by: (Name &amp; Phone No.)

WERC/Peter Davis 266-2993

Authorized Signature/Telephone No.

Date

9-29-95

# ANTICIPATED STATE REVENUE FISCAL EFFECT PROGRAM REVENUE GENERATED 1/

January 1, 1996 - June 30, 1996:

1/2 of 696 = 348 x \$250 =	\$ 87,000
1/2 of 525 = 262 x \$250 =	65,500
1/2 of 177 = 88 x \$ 25 =	<u>2,200</u>
	\$154,700

July 1, 1996 - June 30, 1997:

696 x \$250	=	\$ 174,000
525 x \$250	=	131,250
177 x \$ 25	=	<u>4,425</u>
		\$ 309,675

## ANTICIPATED LOCAL GOVERNMENT FISCAL LIABILITY

January 1, 1996 - June 30, 1996:

1/2 of 575 = 287 x 1/2 of \$250	=	\$ 35,875
1/2 of 510 = 255 x 1/2 of \$250	=	<u>31,875</u>
*		\$ 67,750

July 1, 1996 - June 30, 1997:

575 x 1/2 of \$250	=	\$ 71,875
510 x 1/2 of \$250	=	<u>63,750</u>
*		\$135,625

The proposed rules also establish a fee structure for transcripts of Commission proceedings. The proposed fee structure should have no fiscal effect on the Commission or local government.

1/ The existing \$25 filing fees for complaint and grievance arbitration cases are deposited as general purpose revenue-earned. Effective January 1, 1996, fees for complaint and grievance arbitration cases are to be deposited as program revenue. Thus, the Commission's general program revenue for January 1, 1996 - June 30, 1996 will decrease by \$10,900 and for July 1, 1996 - June 30, 1997 will decrease by \$21,825.

\* The number of complaints filed by local governmental units is negligible.

## FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect

☒ ORIGINAL☐ UPDATED

DOA-2047(R10/92)

☐ CORRECTED☐ SUPPLEMENTAL

1993 Session

LRB or Bill No./Adm. Rule No.

Amendment No.

Subject

WERC Administrative Rule - Filing fees, Transcript fees

## I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

## II. Annualized Costs:

## A. State Costs by Category

State Operations - Salaries and Fringes

Annualized Fiscal impact on State funds from:

Increased Costs

Decreased Costs

\$

\$ -

(FTE Position Changes)

(

FTE)

(-

FTE)

State Operations - Other Costs

-

Local Assistance

-

Aids to Individuals or Organizations

-

TOTAL State Costs by Category

\$

\$ -

## B. State Costs by Source of Funds

GPR

Increased Costs

Decreased Costs

\$

\$ -

FED

-

PRO/PRS

-

SEG/SEG-S

-

## III. State Revenues-

Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)

Increased Rev.

Decreased Rev.

GPR Taxes

\$

\$ -

GPR Earned FY-96 January - June 1996 only

-

10,900

FED

-

PRO/PRS

FY-96 January - June 1996 only

154,700

-

SEG/SEG-S

-

TOTAL State Revenues

\$ 154,700

\$ -

10,900

## NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS

\$

\$ 67,750

NET CHANGE IN REVENUES

\$

143,800

\$

Agency/Prepared by: (Name & Phone No.)  
WERC/Peter Davis 266-2993

Authorized Signature/Telephone No.

Date

## FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect ☒ ORIGINAL ☐ UPDATED  
DOA-2047(R10/92) ☐ CORRECTED ☐ SUPPLEMENTAL

1993 Session

LRB or Bill No./Adm. Rule No.

Amendment No.

Subject

WERC Administrative Rule - Filing fees, Transcript fees

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

## II. Annualized Costs:

## A. State Costs by Category

State Operations - Salaries and Fringes

Annualized Fiscal impact on State funds from:

Increased Costs

Decreased Costs

\$

\$ -

(FTE Position Changes)

(

FTE)

(-

FTE)

State Operations - Other Costs

-

Local Assistance

-

Aids to Individuals or Organizations

-

TOTAL State Costs by Category

\$

\$ -

## B. State Costs by Source of Funds

GPR

Increased Costs

Decreased Costs

\$

\$ -

FED

-

PRO/PRS

-

SEG/SEG-S

-

## III. State Revenues-

Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)

Increased Rev.

Decreased Rev.

GPR Taxes

\$

\$ -

GPR Earned FY 1997

21,825

FED

-

PRO/PRS FY 1997

309,675

-

SEG/SEG-S

-

TOTAL State Revenues

\$

\$ -

21,825

## NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS

\$

\$ 135,625

NET CHANGE IN REVENUES

\$ 287,850

\$

Agency/Prepared by: (Name &amp; Phone No.)

WERC/Peter Davis 266-2002

Authorized Signature/Telephone No.

Date